IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

ST.Appl..No. 11 of 2007

O.NO..R4.62342/2004 of COMMRISSIONER OF COMMERCIAL TAXES, TRIVANDRUM
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APPLICANT/ASSESSEE:

M/S. ASWIN PAPER AGENCIES,
XXV/1380, MARAR ROAD, THRISSUR-680 001.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS: REVENUE:
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1. COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDINGS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAX, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX APPEAL HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Appeal No. 11 of 2007

Dated this the 8th day of August, 2007.

J U D G M E N T

H.L.Dattu, C.J.

Mr. Muhammed Rafiq, learned Senior Government Pleader takes notice for the respondents. He is permitted to file his memo of appearance in six weeks time from today. Though the matter is posted for admission, with the consent of the counsel for the parties to the lis, the matter is taken for final hearing.

(2). The assessee being aggrieved by the orders passed by the Commissioner of Commercial Taxes for the assessment years 1996-1997 and 1997-1998 in exercise of the powers under Section 37 of the KGST Act is before us in this appeal filed under Section 40 of the Kerala General Sales Tax Act.

(3). The appellant before us is a registered dealer, registered both under the Kerala General Sales Tax Act and Central Sales Tax Act. The assessing authority had passed orders under Section 45A of the of the KGST Act for the assessment years 1996-1997 and 1997-1998.

(4). Aggrieved by the orders so passed, the assessee had filed revision before the Deputy Commissioner . The Deputy Commissioner after entertaining the revision petition, has passed an order dated 15-6-1999 remanding the matter to the Intelligence Officer for fresh disposal, in accordance with law.

(5). The Commissioner of Commercial Taxes being of the opinion that the orders passed by the revisional authority is prejudicial to the interest of the revenue, had initiated suo motu proceedings under Section 37 of the KGST Act by issuing appropriate notice to the petitioner to show cause why the orders passed by the Deputy

Commissioner of Taxes for the assessment years 1996-1997 and 1997-1998 should not be revised.

(6). After receiving the show cause notice issued under Section 37 of the KGST Act, the assessee had filed its detailed objection bringing to the notice of the Commissioner that the proceedings need not be continued further and the matter may be dropped. The revisional authority, after extracting the objections filed by the assessee to the show cause notice issued, without even examining those objections, has proceeded to pass the impugned order dated 18-5-2007. The order passed by the revisional authority reads as under.

> " I have examined the case. As per lr.No.IBA 54/96-97 dt.15-2-07, it is revealed that penalty orders in respect of M/s Niju Books and Plastic Industries which is a connected matter has been remanded by the Deputy Commissioner, Thrissur. In the circumstances after considering all the aspects of the case by invoking power under section 37 of the Act, I set aside the order of Deputy Commissioner, Thrissur second cited, and remit the cases back to the Intelligence Officer (IB) Thrissur for fresh disposal according to law within 3 months."

(7). Aggrieved by the said order, the assessee is before us in this appeal. Learned counsel appearing for the appellant vehemently contended that the orders passed by the revisional authority is cryptic. The learned counsel further submits that the order is not a speaking order. Therefore, it is not an order in the eye of law . In support of that contention, the learned counsel took us through the provisions of Section 37 of the KGST Act and also the decisions of the Madras High court in **Bala & Co. Vs. Joint**

Commissioner of Commercial Taxes (2006) 146 STC 389 and the decision of the Karnataka High Court reported in **State of Karnataka and Ors. Vs. Vasavadatta Cements** (2005) 139 STC 28 (Karnataka).

(8). Sri. Muhammad Rafiq, the learned senior Government Pleader for the revenue tried to justify the impugned order.

(9). In the instant case, the order came to be passed by the Intelligence Officer in his powers under Section 45A of the KGST Act for the assessment years 1996-1997 and 1997-1998. Though, the order was the subject matter of revision before the first revisional authority, the revisional authority after considering the plea of the petitioner had set aside the orders passed by the Intelligence Officer in exercise of the powers under Section 45A of the Act and was of the opinion that the matter requires to be reconsidered by the Intelligence Officer and therefore, remanded the matter for fresh consideration. The revisional authority, without even expressing the opinion held that the orders passed by the revisional authority is erroneous, prejudicial to the interest of the revenue and had initiated proceedings under Section 37 of the Act. Notice so issued by the revisional authority is received by the assessee. Without even considering the objection filed, the revisional authority proceeded to dispose of the matter and the orders so passed by the revisional authority is cryptic and contrary to the provisions of Section 37 of the KGST Act. Therefore, the said order cannot be sustained. In that view of the matter, the appeal requires to be allowed and it is allowed. Accordingly, the following:

ORDER

(i). The appeal is allowed.

(ii). The order passed by the Commissioner of Taxes is set aside.

(iii). The matter is remanded back to the revisional authority to re-do the matter afresh, in accordance with law, keeping in view the observations made by this court, after affording an opportunity of being heard to the assessee.

(iv). In view of the order passed in the appeal, I.A.No.1978 of 2007 is rejected.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS